

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE NO. 264 OF 1995**

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the Civil
Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

M/S. NEW BHARAT ENGINEERING WORKS LTD. - Opponent(s)

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Appearance :

MRS. MONA BHATT for MR. MANISH R. BHATT for Applicant(s).
None for the Assessee though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Present is a Reference by the Income-Tax
Appellate Tribunal, Ahmedabad Bench "A" on the following

questions for the opinion of this Court:

"1) Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to work out deduction u/s. 80-I, though no separate books of accounts were for the new unit and the assessee had shown loss?

2) Whether the Appellate Tribunal is right in law and on the facts in directing the Assessing Officer to calculate the amount for disallowance under Rule 6D with reference to all the tours made by the person during the previous year and not with reference to individual tour?"

2. It is to be noted that the Reference is in relation to Assessment Years 1985-86, 1986-87 and 1987-88. On an earlier occasion, a reference was made by the Income Tax Appellate Tribunal in the identical dispute between the same parties, which was referred as I.T.R. No.82 of 1995. Question Nos.2 and 3 of the earlier Reference are identical to the questions referred to this Court. The Division Bench, in relation to Question No.2 of that case (which would be Question No.1 of this case), relying upon the judgements in the matter of **Commissioner of Wealth Tax vs. Chander Sen**, [161 I.T.R. 370], and **C.I.T. vs. J.K. Synthetics Ltd.**, [182 I.T.R. 125],

answered the question in the affirmative and in favour of the Assessee. The facts being identical, we answer the above referred Question No.1 in favour of the Assessee.

3. So far as Question No.3 of the earlier Reference (present Question No.2) is concerned, the earlier Division Bench, placing its reliance upon the judgements in the matter of ***C.I.T. vs. Coromandel Fertilizers Ltd.***, [(1996) 220 I.T.R. 298], and ***C.I.T. vs. Porritts and Spencer (Asia) Ltd.***, [241 I.T.R. 126], and also a judgement of this Court deciding Income Tax Reference No.54 of 1988, decided on 6th February, 2001, held that all the tours undertaken by the employee during the year are not to be grouped together and that the limits laid down in Rule 6D have to be applied with reference to each trip of an individual employee. The earlier judgement, as already been observed, is between the parties for the earlier Assessment Years, we decide the above referred Question No.2 in favour of the Revenue. The Reference stands disposed of accordingly. No costs.

[R.S.Garg, J.]

[M. R. Shah, J.]

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